

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0200P

**Withholding Tax
For the Month January 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Bad Check Penalty

Authority: IC 6-8.1-10-5

The taxpayer protests the bad check penalty.

STATEMENT OF FACTS

The bad check penalty was assessed on a returned check resulting from a withholding tax return filed for the month of January 2003.

The taxpayer is a small corporation.

I. **Tax Administration** – Bad Check Penalty

DISCUSSION

The taxpayer requests waiver of the 100% bad check penalty as the error was unintentional and the result of the taxpayer failing to sign the original check that was sent to the Department for payment of the monthly withholding taxes. Furthermore, the taxpayer states the taxpayer did not receive the original notice.

The Department points out that the point of contention for the 100% bad check penalty is whether or not the taxpayer received the original notice sent by the Department on March 10, 2003. The taxpayer says the original notice was not received. Department records indicate the notice was sent to the correct address. According to statutory regulations, if Department records indicate the billing is sent to the correct address, the mailing of the billing is considered legally valid.

The statute for bad checks, IC 6-8.1-10-5(c) reads: "If the person subject to the penalty under this section can show that there is reasonable cause for the check not being honored, the department may waive the penalty imposed under this section."

Reasonable cause is defined in 45 IAC 15-11-2(b) as: "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties as Department records indicate the original notice was sent to the taxpayer and the taxpayer did not respond to the billing until the 100 % penalty Demand Notice was sent to the taxpayer. Inattention is negligence and negligence is subject to 100% penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.